

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1299

Cir. Ct. No. 2012SC429

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HOGAN & MELMS, LLP,

PLAINTIFF-RESPONDENT,

V.

VALERIE KENNEDY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Vilas County:
NEAL A. NIELSEN III, Judge. *Reversed and cause remanded with directions.*

¶1 MANGERSON, J.¹ Valerie Kennedy appeals an order denying her motion to reopen a small claims default judgment. Kennedy argues the circuit court erroneously exercised its discretion by denying her motion because the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

service by mail on Kennedy was defective and, as a result, the original circuit court lacked personal jurisdiction to enter judgment against her. We agree and reverse the circuit court's order and remand with directions to vacate the default judgment for lack of personal jurisdiction.

BACKGROUND

¶2 Hogan & Melms, LLP, brought a small claims action against Kennedy for unpaid legal fees. Hogan attempted to personally serve Kennedy with the small claims summons and complaint; however, the process server's repeated attempts were unsuccessful. Hogan then had the Vilas County Clerk of Court mail the summons and complaint to Kennedy's address. When Kennedy failed to appear at the small claims hearing, the circuit court entered a default judgment against her.

¶3 Approximately three months later, Kennedy moved to reopen the default judgment. She raised various arguments in support of why the judgment should be reopened, including that the circuit court lacked personal jurisdiction because of defective service. Kennedy asserted that, pursuant to WIS. STAT. § 799.12(2), service by mail in a small claims action was permitted only if the circuit court authorized the practice by rule. The Vilas County Circuit Court Rules contained no such authorization for the practice.

¶4 The circuit court denied Kennedy's motion, reasoning the small claims statutes permitted service by mail if the plaintiff made a reasonable effort to personally serve the defendant. The court also concluded Kennedy's repeated attempts to avoid personal service indicated she had knowledge of the lawsuit.

DISCUSSION

¶5 On appeal, Kennedy argues the circuit court erroneously exercised its discretion by denying her motion to reopen because of defective service. A circuit court has discretion to grant or deny a motion to reopen. *See Franke v. Franke*, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832. We will affirm a circuit court’s discretionary decision as long as the record reflects the circuit court examined the relevant facts, applied a proper legal standard, and used a demonstrated rational process to reach a reasonable conclusion. *Id.*

¶6 “Proper service of a summons and complaint is required to confer personal jurisdiction on the court over the person served.” *Useni v. Boudron*, 2003 WI App 98, ¶¶12-13, 264 Wis. 2d 783, 662 N.W.2d 672. “Uniformity, consistency and compliance with procedural rules are important aspects of the administration of justice; if the statutory prescriptions are to be meaningful, they must be unbending.” *Id.*, ¶13. Accordingly, irrespective of the defendant’s actual knowledge of a lawsuit, “Wisconsin compels strict compliance with the rules of statutory service, even though the consequences may appear to be harsh.” *Id.*

¶7 WISCONSIN STAT. § 799.12 establishes various ways a defendant may be served in a small claims proceeding. Service by mail is permitted in two situations. *See* WIS. STAT. § 799.12(2), (4). Section 799.12(2) allows a defendant to be served by mail if the circuit court has authorized the practice by rule.²

² WISCONSIN STAT. § 799.12(2) provides:

Any circuit court may by rule authorize the service of summons in some or all actions under this chapter, except eviction actions, by mail under sub. (3) in lieu of personal or substituted service under s. 801.11.

Section 799.12(4) allows a defendant to be served by mail if the plaintiff has exercised reasonable diligence in attempting to personally serve the defendant and the service by mail is accompanied by publication.³

¶8 Here, neither party asserts Hogan's service by mail was accompanied by publication; therefore, the only way Hogan's service would have conferred personal jurisdiction over Kennedy was if the practice was authorized by circuit court rule, pursuant to WIS. STAT. § 799.12(2). Kennedy contends the Vilas County Circuit Court Rules do not authorize the practice of service by mail in a small claims proceeding and, therefore, service by mail was insufficient to confer personal jurisdiction.

¶9 We agree. A review of the Vilas County Circuit Court Rules as posted on the State Bar of Wisconsin's website indicates there is no rule authorizing service by mail in a small claims proceeding.⁴ See Vilas County Circuit Court Rules, <http://www.wisbar.org/Directories/CourtRules/Wisconsin%20Circuit%20Court%20Rules/Vilas%20County%20Circuit%20Court%20Rules.pdf> (last visited Dec. 19, 2013). Without a Vilas County Circuit Court rule

³ WISCONSIN STAT. § 799.12(4) provides:

If with reasonable diligence the defendant cannot be served by personal or substituted service under s. 801.11, or if mailed service is authorized under sub. (2) and the envelope enclosing the summons is returned unopened to the clerk, service may be made by mailing and publication under sub. (6). The clerk shall issue a new return date allowing timely publication of a class 1 notice under ch. 985.

⁴ Pursuant to WIS. STAT. § 753.35, the State Bar of Wisconsin serves as a repository for the circuit court rules.

authorizing the practice of service by mail, Hogan's service by mail was insufficient to confer personal jurisdiction over Kennedy.

¶10 Hogan nevertheless argues we should conclude its service by mail conferred personal jurisdiction. Hogan contends that, despite the fact that Vilas County has not published a rule authorizing service by mail, such a rule exists informally as a matter of practice because Vilas County routinely allows litigants to elect service by mail in small claims cases. Hogan asks us to take judicial notice of other Vilas County small claims cases where litigants were served by mail, and it asserts it would be unfair to "punish" Hogan for a practice that is customarily permitted in Vilas County.

¶11 We decline Hogan's requests. First, WIS. STAT. § 799.12(2) explicitly states that service by mail in a small claims proceeding is permitted only if the practice is authorized by circuit court rule. No published Vilas County Circuit Court rule authorizes the practice, and we will not assume such a rule exists. Additionally, we decline to take judicial notice of any other cases where a defendant was served by mail without a circuit court rule authorizing the practice. Simply because a defendant in another case may have been improperly served does not mean the improper service on Kennedy confers personal jurisdiction in this case. Further, we are not "punish[ing]" Hogan by requiring strict compliance with the rules of statutory service. As previously stated, "Wisconsin compels strict compliance with the rules of statutory service, even though the consequences may appear to be harsh." *Useni*, 264 Wis. 2d 783, ¶13.

¶12 Because no Vilas County Circuit Court rule authorizes the practice of service by mail, Hogan's service by mail was insufficient to confer personal jurisdiction over Kennedy. The circuit court committed an error of law by

determining the service by mail was sufficient to confer personal jurisdiction over Kennedy. Accordingly, we reverse the circuit court's order denying Kennedy's motion to reopen, and remand with directions that the default judgment entered against Kennedy be vacated for lack of personal jurisdiction.

¶13 Finally, because we have reversed the court's order and remanded with directions to vacate the judgment, we need not address Kennedy's remaining appellate arguments. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

